

0
JC

IN THE IOWA DISTRICT COURT FOR POLK COUNTY

STATE OF IOWA ex rel.
THOMAS J. MILLER, 99AG25112
ATTORNEY GENERAL OF IOWA,

Plaintiff,

v.

NATIONWIDE CONSTRUCTION, INC.)
AND MARK SCHNEIDEWIND,

Defendants.

EQUITY NO. CE 67602

CE 067662

ORDER GRANTING STATE'S
APPLICATION TO ENFORCE
ATTORNEY GENERAL SUBPOENA

On this 14th day of June, 2011, this matter comes before the Court for hearing on the State's *Application To Enforce Attorney General Subpoena*. Assistant Iowa Attorney General Benjamin E. Bellus appeared for the Plaintiff. Neither the Defendants nor anyone for them appeared for the hearing. The Court had the names of the Defendants called three (3) times in the hallway of the Polk County Courthouse and requested that they appear in Courtroom 210 for the hearing. No party answered the call. The Defendants received timely personal service of notice of the hearing as noted by the proof in the court file. The Court proceeded with the hearing, and being fully advised in the premises, finds the following:

1. On May 27, 2010, Nebraska Defendants, Nationwide Construction, Inc. and Mark Schneidewind were served Attorney General Subpoena Number 2193 via U.S. Registered Mail, which required the attendance of Mark Schneidewind at the office of the Attorney General to provide testimony and documents relating to business practices of the Defendants.¹

2. Although Defendant Schneidewind subsequently acknowledged receipt of the

¹ Iowa Code § 714.16(5)(b) states that service of an investigative subpoena may be made upon a person not within Iowa by mailing the subpoena by registered mail to the last known business address, residence or abode of the person for whom the subpoena is intended.

file

subpoena, Defendants failed to appear at the Attorney General's office to testify or provide documents on June 9, 2010, as directed in the subpoena.

3. On January 11, 2011, the State filed an *Application For Order Enforcing Attorney General Subpoena* which, along with an *Order Scheduling Hearing On State's Application To Enforce Attorney General Subpoena*, was issued by this Court and was to be personally served on Defendants at least ten days before the original hearing date of February 28, 2011.

4. The process server retained by the State to serve the Defendants in Nebraska was unable to obtain service on the Defendants within the time frame specified in this Court's order and the State filed a motion to continue the hearing which was granted by this Court on February 24, 2011; and hearing on this matter was continued to March 29, 2011.

5. The State retained a second process server and provided the process server with additional addresses which had been used by the Defendants, but the second process server was also unable to obtain personal service on the Defendants despite making eleven different attempts at different times of the day.

6. On April 27, 2011, the State filed a motion for a new hearing date and for permission to serve the Defendants by alternate methods; which was granted by this Court in an order filed on April 28, 2011, in which this Court set a new hearing date for June 2, 2011 and authorized the State to serve the Defendants notice of this hearing by posting, by First Class U.S. Mail, by delivery via FedEx, by facsimile transmission and by e-mail.

7. On its own motion after consulting with counsel for the State, this Court filed an order on May 10, 2011 continuing this hearing to June 14, 2011.

8. The Court finds that the State has fully complied with this Court's order directing the State to serve the Defendants through alternate means, and that the Defendants have been served

notice of this hearing in a manner consistent with the due process of law.

9. The Court finds that the State has served the Defendants by personally serving notice of this hearing on Paul Morrison on May 26, 2011; at which time Morrison identified himself as chief operations manager for Defendant Nationwide Construction, Inc. and whom at that time informed the process server that the Defendants intend to begin doing business under the new name of "Midwest Restorations".

10. The Court finds that Defendants failed to appear on this date for hearing on the State's Application.

11. The Court further finds that the State has complied with the procedures required by Iowa Code § 714.16(5) and is entitled to an Order granting relief pursuant to Iowa Code § 714.16(6).

Based upon these findings, the Court enters the following

ORDER

IT IS ORDERED, pursuant to Iowa Code § 714.16(6), that Defendants Mark Schneidewind and Nationwide Construction, Inc. (whether under their names, or any other corporate names, fictitious names, trade names or d/b/a's, including but not limited to "Midwest Renovations") and their partners, officers, employees, agents, successors, contractors, and all other persons, corporations and other entities acting in concert or participating with the Defendants, who have actual or constructive notice of this Order are enjoined and prohibited from selling, promoting or advertising for sale any merchandise or services in the State of Iowa or collecting or accepting any payments from Iowans or Iowa businesses until such time as Defendants have demonstrated to the Court that they have fully complied with the Attorney General's subpoena.

IT IS FURTHER ORDERED that, pursuant to Iowa Code § 714.16(6), the right or ability of Mark Schneidewind and Nationwide Construction, Inc. to register as a "contractor" with the Iowa Labor Commissioner, pursuant to Iowa Code § 91C.2, is revoked and suspended until such time as Defendants have demonstrated to the Court that they have fully complied with the Attorney General's subpoena.

IT IS FURTHER ORDERED that, pursuant to Iowa Code § 714.16(11), Defendants Mark Schneidewind and Nationwide Construction, Inc. shall be jointly and severally liable for the payment of all court costs in this matter, reasonable investigative costs of \$6,970.⁰⁰ and reasonable attorney fees of \$7,460.⁰⁰ as supported by the submitted affidavits. RBI

IT IS FURTHER ORDERED that Defendants Mark Schneidewind and Nationwide Construction, Inc. are hereby on notice that failure to comply with any provision of this Order may result in a determination that the Defendant(s) are in contempt of this Court and subject to punishment for contempt in the form of fines and/or imprisonment pursuant to Iowa Code Iowa Code chapter 665; and in addition, subject to an additional penalty of up to \$5,000.00 per day for each day that Defendants are in intentional violation of this Order pursuant to Iowa Code § 714.16(7).

IT IS FURTHER ORDERED that the Court reserves jurisdiction over this action in order to take any further action deemed necessary to enforce this Order and to award the State judgment for any costs, including attorney's fees, it incurs in the event of noncompliance by Defendants. Such costs may include court costs in excess of those already specifically authorized by this Order.

SO ORDERED this 14th day of June, 2011.



RICHARD G. BLANE, II, District Judge u
Fifth Judicial District of Iowa

Copies to:

Clerk: <u> </u> J <u> </u> <input checked="" type="checkbox"/> C <u> </u> U <u> </u> X
--

Benjamin E. Bellus
Assistant Attorney General
Consumer Protection Division
1305 East Walnut, 2nd Floor
Des Moines, IA 50319
ATTORNEY FOR PLAINTIFF

*Email: bbellus@ag.state.ia-us
6/23/11 mailed copy
to B.B. cg*

Mark Schneidewind
Nationwide Construction, Inc.
1616 North 203rd Street
Omaha, NE 68022
DEFENDANTS

*✓ 6/15/11
cg*

[If you require the assistance of auxiliary aids or services to participate in court because of a disability, immediately call your district ADA coordinator at (515) 286-3394. (If you are hearing impaired, call Relay Iowa TTY at 1-800-735-2942.)]